

The Gazette of India



EXTRAORDINARY

PART I—Section 1

PUBLISHED BY AUTHORITY

No. 481] NEW DELHI, THURSDAY, DECEMBER 4, 1952

ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 4th December 1952

No. 19/26/52-Elec. III.—WHEREAS the election of Shri Mohammad Rafique of Town Nowgong, P.O. Nowgong, Assam, as a member of the Legislative Assembly of Assam from the Laharighat constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Nurul Islam of Town Nowgong, P.O. Nowgong, Assam;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition, has, in pursuance of the provisions contained in section 103 of the Said Act, sent a copy of its Order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION NO. 26 OF 1952.»

Present:—

Shri Ashutosh Das, Retd. District Judge, West Bengal.—Chairman.

Shri Umakanta Gohain, Retd. Addl. District Judge, } Members of the
(Assam), } Election Tribunal.
Shri U. N. Bezbarua, Barrister-at-Law, Gauhati.

In the matter of a petition made under Section 81 of the Representation of People Act, 1951, calling in question an election;

AND

In the matter of declaration of result made on 1st February, 1952, by Mr. N. N. Chakravarty, Returning Officer, District Nowgong (Assam), about the election of member to fill up the seat in the Laharighat Constituency of the Assam Legislative Assembly, and under Section 67 of the Representation of People Act, 1951,

Nurul Islam of town Nowgong, District Nowgong, Assam—Petitioner.

Versus

1. Mohammad Rafique of town Nowgong, District Nowgong, Assam,
2. Barkakati Chandra Kanta of village Athgaon, P.O. Dhing, District Nowgong, Assam,
3. Bordoloi Nagendra Chandra of village Bhomoraguri, P.O. Batadrava, District Nowgong, Assam;

4. Nath Hangsadhar of town Halbargaon, P.O. Haibargaon, District Nowgong, Assam;

5. Syed Mahboobulla of town Gauhati, District Kamrup, Assam—*Respondents.*

Petitioner, represented by Shri S. Lahiri, Advocate-General, Assam; and Shri L. D. Kotaki, Pleader.

Respondent No. 5, represented by Shri Bhabesh Chandra Barua, Advocate and Shri Hareshwar Goswami, Advocate.

Judgment

There were as many as 8 candidates contesting for the seat of Laharighat Constituency of the District of Nowgong to the Assam Legislative Assembly and their names were published as having been validly nominated. Respondent No. 1 Mohammad Rafique was declared to have been the returned candidate, as having polled the largest number of valid votes. A large number of Stations was provided for poll of votes of the Constituency, two of them being numbered (42 at Barangabari L. P. School) and 47 (at Kujisatra L. P. School). The petitioner in the case is Nurul Islam, a defeated candidate. His total poll was 7850 (according to the account in form No. 14), as against 7792, polled by the returned candidate, according to the same account in form No. 14, the petitioner thus leading in the total poll by 58 votes over the returned candidate. The third largest total poll was commanded by Respondent No. 2 Chandra Kanta Barkakoti, the total poll of the last being only 2140. Out of the total polls of the several candidates, a large number of ballot-papers, cast at the above two polling Stations (Nos. 42 and 47), were rejected by the Returning Officer, as mostly falling within the mischief of Rule 47, Clause (I) Sub-clause (a) of Representation of People (Conduct of Elections and Election Petitions) Rules, 1952. The ballot-papers, so rejected, are as follows, candidate by candidate:—

(i) Nurul Islam (Petitioner) ...	... 427-at No. 42 and 102 at No. 47.
(ii) Md. Rafique (Respd. I) ...	... 18 at No. 42 and 10 at No. 47.
(iii) Barkakati Chandra Kanta (Respd. No. 2) ...	... 40 at No. 42 and 87 at No. 47.
(iv) Bordoloi Nagendra Chandra (Respd. No. 3) ...	... 8 at No. 42 and 12 at No. 47.
(v) Nath Hangsadhar (Respd. No. 4) ...	... 419 at No. 42 and 5 at No. 47.
(v) Syed Mahboobulla (Respd. No. 5) ...	... 6 at No. 42 and Nil at No. 47.

The total number of rejected ballot-papers of the two Polling Stations came up to as many as 1140, for the different candidates.

It may at once be noted here that the Returning Officer rejected the ballot-papers of the different candidates, as above, on the ground that all of them excepting the two, in the case of Nurul Islam and 4, in the case of Hangsadhar Nath, substantially for the reason that they bore marks or writings on them, by which the electors could be identified, the remaining 6, as noted above, being rejected by the Returning Officer, as recorded by him in his accounts of form No. 15, for other valid reasons which were not, however, specified by him.

The most important point for determination in the case, as appears to us, is whether the orders of rejection of all the above ballot-papers by the Returning Officer may be substantiated and, further, if the above orders may only be partially upheld here that it would affect the result of the election.

The returned candidate, Md. Rafique since resigned his seat, which fact is admitted, and his plea is that he is not, in the circumstance interested in the result of the election petition.

In the election petition, besides the above ground of improper rejection of these ballot papers, others taken were that the nomination of the returned candidate had been improperly accepted by the Returning Officer, and that this materially affected the result of the election. Further that there was non-compliance by the Returning Officer with the provisions of section 66 of the R. P. Act, 1952, in his not having declared the result of the election forthwith. Upon the above pleas, taken in the election-petition, issues Nos. 2 and 5 were framed. These were not, however, urged

on behalf of the petitioner in the course of trial. The reliefs claimed by the petitioner stand as follows after some amendment of the election petition:—

(a) That the election of Laharighat Constituency of the District of Nowgong, Assam, be declared wholly void;

Or

(b) That the election of the returned candidate be declared void and the petitioner be declared to have been duly elected, having received a majority of valid votes.

Respondent No. 5 of the case, Syed Mahaboobulla alone filed a written statement contesting the election petition, and his defence *inter alia* was that the returned candidate having since resigned his seat and the seat having accordingly fallen vacant, the election petition was not maintainable. His further defence was that all the ballot papers referred to above, were, in fact, properly rejected by the Returning Officer.

The following issues were accordingly settled at the first hearing of the case:—

Issues

1. In the election petition maintainable by reason of Respondent No. 1 having resigned his seat?

2. Was the nomination of Respondent No. 1 improperly accepted by the Returning Officer, as alleged in para. 3 of the election petition? If so, has the result of the election been materially affected thereby?

3. Were ballot papers found in the ballot boxes of polling centres Nos. 42 and 47, for the Constituency, all rejected by the Returning Officer as stated in para. 9 of the election petition and were the numbers of such ballot papers cast in favour of the several candidates, as stated in the same para. of the election petition?

4. Was there a valid ground for rejecting these ballot papers, at any rate, those cast in favour of the petitioner? Did the ballot papers, or any of them, bear any mark of writing by which the elector could be identified?

5. Was there a non-compliance with the provisions of Section 66 of the R.P. Act, 1951, by the Returning Officer, in not having declared the result of the counting forthwith, as alleged in paras 13 and 14 of the election-petition? If so, has the non-compliance with the Rule materially affected the result of the Election?

6. To what relief, if any, is the petitioner entitled?

Issue No. 1 was first taken up on the prayer of the Respondent for consideration and the objection taken by the respondent on this account was over-ruled by us, as per the order No. 17, dated 30th October, 1952, recorded in the order-sheet of the case. As noted in our above order, it had been urged on behalf of the respondent that the returned candidate having resigned his seat, the same has fallen vacant, as under Article 190(3)(b) of the Constitution of India, and the only thing open now is a by-election to fill in the seat, and the election-petition, as is before the Tribunal, is not maintainable in law. We rejected this contention substantially on the ground that the election-petition calling in question the election of the returned candidate, having in this case been presented to the Election Commission duly and the same having been accepted by them, and this having since been referred to an Election Tribunal, constituted for the purpose, for its decision, there now rested a statutory obligation on the Tribunal to give a decision with regard to the election-petition on its merits, irrespective of the fact that the candidate, whose election has been called in question here, has since resigned. The further fact that carried weight with us was that in the present case, the petitioner had not merely asked for the relief of having a declaration that the election of the returned candidate was void, but his further claim was that he had, in fact, been duly elected to the seat of the Constituency by a majority of valid votes. This claim as made by the petitioner in his election-petition, was left unaffected by the resignation of the seat of the returned candidate. We over-ruled this preliminary objection taken by the respondent for the above reasons.

Then, as already noted, issues 2 and 5 of the case were not pressed on behalf of the petitioner and they are accordingly dismissed.

About issue No. 3 of the case, as reproduced above, the fact was proved that the number of rejected ballot-papers, cast in favour of the several candidates, were really as set out in para. 9 of the election-petition.

We now come to issue No. 4 of the case, which appears to be the most important point for consideration, namely, whether the rejection of the aforesaid ballot-papers, or any of them, by the Returning Officer, was improper.

About 6 out of these rejected ballot-papers, to which references have already been made, though the order of rejection by the Returning Officer, do not appear to have been in order, as the actual reason for their rejection was not specified by him, but that they were rejected with the simple observation that this was done for valid reasons other than the identifying marks borne on the rest of them, this fact is not considered of any importance here, as this would not actually affect the result of the poll.

Other instances of non-compliance with Rules by the Returning Officer, in this connection, may be referred to here:—

(1) The word "rejected" was not endorsed by him on the ballot-papers that were actually rejected, as required by Rule 46, Clause (I), Sub-clause (VII);

(2) A brief record of each ballot-paper, so rejected, with the prescribed particulars, was not made by him in the account in form No. 15, as required by the same Sub-clause of the Rule. There is, of course, no further evidence before us to indicate that as those ballot-papers were held as liable to rejection by the Returning Officer, at the time of counting of votes, any candidate or his agent questioned the correctness of such rejection and so nothing turns upon the fact that on the rejected ballot-papers, the reason for rejection is not also briefly endorsed, as is required by the same Sub-clause of the Rule. But the above two instances of irregularities remain. We would not, however, regard them as of any material consequence here, as the records indicate that the above ballot-papers, excepting the 6, referred to above, were, in fact, rejected by the Returning Officer, as, according to him, they bore marks, sufficient to identify the electors.

Before we next proceed to consider whether these ballot-papers bore such marks or writings by which the electors could be identified, we want to deal with some preliminary contentions, urged on behalf of the petitioner before us, on the point.

It is clear from the evidence on record that the voters were not at fault for these marks and writings on the ballot-papers, and that these were really noted by the Polling Officers of the two Polling Stations, who had been placed in charge of the ballot-papers, when issuing the same to the voters appearing to poll. It is, further, in evidence that this glaring irregularity was committed by the Polling Officers, under misdirection of the Presiding Officers of the two Polling Stations, who gave their evidence in the case, on being examined by the petitioner. They are witnesses Nos. 1 and 2 for the petitioner. The statement of P.W. 1, who was the Presiding Officer of P.S. No. 47, is that he had, in fact, instructed his Polling Officers to note the numbers of the electors borne on the electoral-rolls on the ballot-papers, when issuing the same and his further statement is that he had been so directed by the Election Officer of the area. The witness further states that as the poll went on, he went round the booth to see that the above instruction, given by him to the Polling Officers, were being faithfully followed. His last statement is that he did not know at the time that it was against the Rule to note the numerals of the electoral-rolls on the ballot-papers. The above explanation furnished by the witnesses is all ridiculous. In his cross-examination, he states that he had obtained written instructions from the Returning Officer about how the poll was to be conducted, and he describes these instructions as a "guide-book", which was written in English. These written instructions have not been produced before us in the case, but it may definitely be assumed that they contained necessary instructions for safe-guarding the secrecy of ballot. The witness says that, though he had read upto I.A. standard, he could not understand the whole of these written instructions, furnished to him, yet he did not care to refer to any competent person, for elucidation of the instructions, as were not clear to him. He states, further, in his cross-examination, that the Deputy Commissioner of Nowrang had, indeed, convened a conference of all the Presiding and Polling Officers for the purpose of instructing them about how the poll was to be conducted, but that the witness had not the opportunity to attend the conference, because he was appointed later, i.e., on the 17th January, which was two days before the actual polling. He, however, states that he attended a certain demonstration held under the supervision of the local Election Officer, about the proper procedure of the poll, and inspite of this, it is most strange that he had failed to observe the fundamental principle of secrecy of the ballot. In fact, the whole evidence of the witness is ridiculous. P.W. 2, who was the Presiding Officer of Polling Station No. 42, does not fare better in his evidence. He states that, just at the nick of time, before the commencement of the poll, he discovered that two of the Polling Officers of the Station, did not know English, and it was not possible for them to note the serial number of the

ballot-papers against the names of the electors in the electoral-rolls, as the ballot-papers were issued, as the serial number of the ballot-papers was written in English. The number of the electors in the electoral-rolls was, however, noted in the vernacular, and the witness states that, in the above circumstance, he further found himself in a state of fix, and was induced to exercise his best discretion and consequently issued the wrong direction to the Polling Officers to adopt a reverse procedure of noting the numerals of the electors' rolls on the ballot-papers, without noting the numerals of the ballot-papers against the names of the electors in the electoral-rolls. He says that he did not report his difficulties to any Election Officer, superior to him, asking for the necessary instruction, as that would require suspension of the poll for some time, and consequent dislocation of the whole business. The witness admits that he did not consider it of any importance to report the above departure from the Rule to the Returning Officer or any other Election Officer, superior to him, at any time after the close of the poll. It is most unfortunate that the aforesaid Presiding Officers should have made these misdirections, which went to the root of the secrecy of ballots, and we are persuaded to observe that their conduct, in fact, betrays a lack of a sense of responsibility that had been entrusted to them, and there is also betrayed an amount of carelessness on the part of the Returning Officer, in having selected as Polling Officers some persons who could not read the serial numbers of the ballot-papers, which were written in English. A further comment may be added in this connection, and it is that the serial number of the ballot-papers issued, were not noted against the names of the electors, on the electoral-rolls, as these received delivery of the ballot-papers, and it is evident from the deposition of the Presiding Officer of Polling Station No. 42, to which reference has already been made, that a clear instruction had been received by the Presiding Officers, in this above behalf.

Thus it is evident that the voters were not at fault for the above marks and writings appearing on the rejected ballot-papers, and the officers entrusted with the conduct of the poll, were entirely to blame for this, and that they violated the provisions of the Statutory Rules on the subject, which brought these ballot-papers, according to the Returning Officer, within the mischief of Rule 47, Clause (I), Sub-clause (a).

Now from the above fact, it was urged on behalf of the petitioner as follows:—

The Statutory Rules, referred to above, as were made by the Central Government, under Section 169 of the R.P. Act 1951, are not of a mandatory character but are only directory, and any violation of such Rules by the Public Officers, entrusted with the conduct of poll, may, therefore, be regularised, and that even by the Election Tribunal at the time of hearing of an election-petition. It is further contended that in none of these cases, there is an indication that the voters in question had not really intended to cast ballots in favour of the candidates in whose boxes they cast the same, and in the circumstance, they are fit cases for regularisation by the Tribunal, as suggested above.

In support of the view that the above Statutory Rules are really of a directory nature, which may be regularised at a proper stage, we have been referred to Maxwell on Interpretation of the Statutes, 9th Edition by Sir Gilbert and Jackson, at page 379, where the following observation is found:—

"Where the prescription of a Statute relates to the performance of a public duty and where the invalidation of sets done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, without promoting the essential aims of the Legislature, such prescriptions seem to be generally understood as mere instruction for the guidance and Government of those on whom the duty is imposed, or, in other words as directory only."

Further down, it is noted here:—

"It has often been held, for instance, when an Act ordered a thing to be done by a public body or Public Officer and pointed out the specific time when it was to be done, that the Act was directory only and might be complied with after the prescribed time To hold that an Act which required an officer to prepare and deliver to another officer a list of voters on or before a certain day under a penalty made a list not delivered till a later day invalid, would, in effect, put it in the power of the person charged with the duty of preparing it to disfranchise the elector, a conclusion too unreasonable for acceptance".

We do not, in fact, dispute the correctness of the above proposition of law urged on behalf of the petitioner. But then it is to be considered that there is

in each such case of irregularity, a proper stage in which its regularisation has to be asked for, and in cases like the present ones, it should normally have been before the counting of votes. There is no evidence here to indicate that there was any attempt by anybody in these cases for such regularisation, before a complaint was made on this account for the first time in the present election-petition, not to speak of this having been done before the counting of votes took place, though it was very likely in the circumstance of the case that the fact that the afore-said Presiding Officers of two Polling Stations, misdirected as above, gained some publicity even at the time of the poll. In the circumstance, the Returning Officer was bound to reject these ballot-papers at the time of counting of votes, if they really fell within the mischief of Rule 47(1)(a), even if the Public Officers entrusted with the conduct of the poll were responsible for the above violation of the Statutory Rule. It was, however, urged on behalf of the petitioner that even now, during the hearing of the election-petition, the Tribunal can enter into the question and regularise the irregularity, and hold the ballot-paper as valid, inspite of the marks and writings appearing on them, when it would appear that there was indeed no mistake on the part of the voters in casting the ballot-papers in favour of the candidates of their choice. In support of the view that the Tribunal is competent to enter into the above question even at the present stage, the case reported in the *Gazette of India, Extraordinary*, dated August 25, 1952, in the case of Shri Gidwani Choithram Partabrai is relied upon. The facts of this case do, indeed, appear to us distinguishable. That was a case failing under Rule 47(1)(c), there having been a mistaken inter-change of ballot-papers issued to the voters. It was rightly observed by the Tribunal in Gidwani's case that the irregularity discovered in the case was not of a vital nature affecting the election, and that in such a case, the Tribunal can look into the question at the time of hearing of the election-petition and condone the irregularity. In the present case, the irregularity is of a fundamental character, going to the very root of the secrecy of ballot, and as such, vitally affecting the election. So, we are of opinion that such an irregularity cannot be condoned by the Tribunal, and the rejection of the afore-said ballot-papers, if really made on a valid ground covered by Rule 47(1)(a), must stand.

We now proceed to the question whether the marks or writings, as were found on the afore-said rejected ballot-papers, were sufficient to identify the electors. With regard to those of the ballot-papers on which names of the electors appeared, they admitted of easy identification of the electors, to those who might take part in the inspection of the ballot-papers at the time of counting of votes, and there can be no question of these ballot-papers having been properly rejected. It appears, however, that the total number of such ballot-papers, which were again all at the Station No. 47, was 30, in the case of the petitioner, and 4, in the case of the returned candidate. If the Tribunal holds that these were the only ballot-papers that had been properly rejected, and the rest of them did not really bear marks sufficient for identification, then the petitioner will be found to have a lead of as many as 30 valid votes over the returned candidate.

But it really appears to us that the other ballot-papers too bore marks by which it was possible to identify the electors, and as such, they too fell within the mischief of Rule 47(1)(a). It has been found that in the numbers noted over these ballot-papers, the figure at the top represents the number of the electors on the electoral-roll, to whom the particular ballot-paper was issued, and that at the bottom represents the page number of the electoral-roll where the name of the same elector finds place.

Now about the principle, which should guide us in determining whether these ballot-papers really fell within the mischief of Rule 47(1)(a), we refer to the Champaran North Case, of which a summary appears in the Indian Election Cases by B. K. Khanna, Vol. II, at page 104. We agree in the view taken in the case that where the voters' numbers were marked on the ballot-papers, and there was just a possibility for those engaged in the counting of votes to ascertain from these marks, who the electors were, who cast the votes, the secrecy of the ballot is violated, and as such, the ballot-papers are liable to be rejected. It need not be shown definitely how and in what way such identification might become actually possible. In the light of the above principle of law, which we endorse, it is to be considered next whether it was just possible in these cases for those engaged in the counting of votes to identify the electors from such marks, and if the point is found in the affirmative, the rejection of these ballot-papers too by the Returning Officer, has to be held as proper.

Let us now proceed to consider the Statutory Rules of procedure about the counting of votes, and also take into account the persons who were likely to notice these marks on the ballot-papers at the time of counting. We refer here to the provisions of Rule 46 of the R.P. (Conduct of Elections and Election-petitions) Rules, 1951, in so far as they are necessary for the purpose of the above enquiry.

According to the procedure prescribed, all the ballot-boxes allotted to one particular candidate are first to be separated and placed together. The contents of these particular boxes shall then be taken out, one after another, and the same shall be arranged in bundles of convenient size, and counted with the aid of persons appointed to assist in the counting of votes, there being no inspection of these ballot-papers at this stage for the purpose of determining their validity. As the counting of ballot-papers contained in each box is completed, a record shall be made in form No. 14. After this is completed, the Returning Officer shall take in hand the inspection of the bundles of the ballot-papers of the particular candidate, as thus arranged, one after another, and shall at the same time, pick out those ballot-papers from within each bundle, as may appear to him liable to rejection. The candidates, their election-agents and the counting agents, who may be present there, shall, at the same time, be given by the Returning Officer, reasonable opportunity to inspect the above ballot-papers, picked out of the bundles by the Returning Officer, and then these candidates and their agents, as aforesaid, may question the correctness of the view of the Returning Officer at that very time, in respect of the ballot-papers, being liable to rejection. A brief record shall then be kept in form No. 15 by the Returning Officer, of the serial Nos. of such ballot-papers rejected by him and of such particulars, as will identify the ballot-boxes in which each such ballot-paper was found. After the ballot-boxes of one particular candidate have thus been dealt with, the Returning Officer is to take up the ballot-boxes of the next candidate, and the same procedure is to be followed, till all the candidates are thus dealt with, and then an account of the valid votes polled by each candidate will be taken and the result of the Election declared.

It would appear from the above, that as the Returning Officer takes out the ballot-papers from each bundle for rejection, it would quite be possible for him, as also to the candidates, and their agents, who may then be present, to ascertain the Polling Station where this particular ballot-paper was cast, and it would then further be possible for them to ascertain from the roll-numbers appearing on the ballot-papers, who the electors were, who bore these numbers. Of course, a reference to the electoral-rolls may ordinarily be necessary for such identification, but that, such identification may be "possible" also without reference to the electoral-rolls, cannot altogether be ruled out. Further, though under Rule 32, the marked copy of the electoral-roll is to be delivered by the Presiding Officer in a sealed cover to the Returning Officer, after the close of the poll, there appears no regulation to prevent the Returning Officer from having another copy of the electoral-roll in his possession, at the time of the counting of votes, to which it may be possible for him to refer, to identify the electors from the roll-numbers appearing on the rejected ballot-papers. About the candidates and their agents, who may be present at the time, they may have a copy of such electoral-rolls in their hands at the time, to which they might readily make reference for identification of the election from the numerals, appearing on the ballot-papers. Lastly one other salient circumstance of the case may be taken into account. As already observed, the mis-direction, given by the Presiding Officers of the two polling stations, are likely, in the circumstance of the case, to have gained publicity even at the time of the poll, and it is also likely that the candidates and their agents, who may be present at the counting, may have been on the alert, and watchful, to ascertain the identity of the voters on a reference to the roll-numbers appearing on these rejected ballot-papers.

We would, therefore, hold from the above facts and circumstances that it was possible to identify the electors at the time of the counting of votes from the mere numerals, as appeared on the rejected ballot-papers, and they are, accordingly, held, as properly rejected.

We are now left only to consider the issue No. 6, which runs to the effect:—
To what relief, if any, is the Petitioner entitled?

The reliefs claimed by the petitioner were:—

- (a) that the election of the Constituency be declared wholly void; or
- (b) the election of the returned candidate be declared void and the petitioner be declared to have been duly elected.

With regard to the prayer (a), Section 100, Sub-section 1, Clauses (a), (b) and (c), prescribe the several grounds on which an election may be declared wholly void. There is no material before us to bring the present case within the scope of any of the above grounds. Sub-section 2, Clause (c) of the same section of the R. P. Act, 1951, provides that a case of non-compliance with the provision of any Statutory Rule under the Act, relating to the election, may be considered a sufficient ground to declare the election of the returned candidate to be void, provided that the result of the Election has, in effect, materially been affected by such non-compliance of Rule.

In the present case, it does, in fact, appear from our above findings that the result of the election was materially affected by reason of non-compliance with the Statutory Rules by the Officers entrusted with the conduct of the poll, which affected the secrecy of the ballot. For this reason, we hold that the election of the returned candidate is to be declared void in the case. Of course, the petitioner cannot get the further relief claimed under his prayer (b), in that he may instead be declared to have been validly elected, because our view is that the ballot-papers were properly rejected by the Returning Officer in the case. The petitioner may, however, have here the simple declaration that the election of the returned candidate is void, though, in the net result his case is not carried beyond what it would have been, if there was a simple vacancy of a seat on the resignation of the returned candidate.

Further, in the circumstance of the case, we are of opinion that we should make no order as to cost in the election-petition.

ORDER

The election-petition is allowed and the election of the returned candidate Md. Rafique is declared void, as a result. We would make no order as to the cost in the case.

(Sd.) A. DAS, Chairman.

(Sd.) U. N. BEZBARUSH, } Members.
(Sd.) UMAKANTA GOHAIN, }

The 24th November 1952.

New Delhi, the 4th December, 1952

No. 19/22/52-Elec.III.—WHEREAS the election of Shri K. Suryanarayana, Municipal Chairman, Bheemunipatnam, as a member of the Legislative Assembly of the State of Madras from the Bheemunipatnam constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Pulapa Narasingarao, son of Rangaprasadharao Garu, Telaga, of Bheemunipatnam, Vizianagaram Division of Visakhapatnam District;

AND WHEREAS, the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, VISAKHAPATNAM.

Election Petition No. 1/52.

(Election Petition No. 22/52 before the Election Commission, India).

Coram :

Shri K. V. L. NARASIMHAM. Chairman.

Shri T. SRIRANGAM B.A.B.L. } Members. of the Election Tribunal
Shri P. CHENCHAYYA M.L. }

In the matter of the Representation of the People Act, 1951.

and

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951.

and

In the matter of the Election Petition presented there- } and under by Shri Pulapa Narasingarao, son of Rangaprasadharao Garu, Telaga, 30 years, Bankers, residing at Bheemunipatnam, Vizianagaram Division of Visakhapatnam District. } Petitioner

Versus

1. K. Suryanarayana, Municipal Chairman Bheemunipatnam. }
2. J. V. K. Vallabharao, Communist Office, Main Road, Vizianagaram. }
3. P. Madhavavarma, Proprietor, Jonnavalasa, Vizianagaram R. S. } Respondents.
4. B. Audinarayana, Socialist Office, Fort-Vizianagaram. }

This petition having been heard on 10th October, 1952, 6th November, 1952, and 7th November, 1952, before the Election Tribunal, in the presence of Messrs C. V. Somayajulu, Vakil and K. S. N. Murty, Advocate for the petitioner, of Messrs. M. Pattabhirami Reddi, Advocate and C. Jagannadharaju, Vakil for the 1st respondent, of Sri C. Bangararaju, Advocate for the 3rd respondent, 2nd respondent appearing in person, 4th respondent being absent and having stood over to this day for consideration, the Tribunal delivered the following:—

JUDGMENT

The petitioner, Fulapa Narasingarao, residing at Bheemunipatnam Vizianagaram Division, Visakhapatnam district was a candidate at the General Elections for the Madras Legislative Assembly from the Bheemunipatnam Constituency. He filed his nomination paper before the Returning Officer, Vizianagaram, on 21st November 1951. On 28th November, 1951, which was the date fixed for the scrutiny of nominations, the petitioner alone was present. His proposer was not present. The other candidates who had filed the nomination papers (respondents herein) were also present. The Returning Officer rejected the nomination paper on the ground that the signature of the proposer in the nomination form was not that of the proposer whose name was written in the nomination form, Ex.C-1, as Mr. Jutthada Venkata Ramanayya against head No. 9. The Returning Officer drew up contemporaneously a brief statement of his reasons for such rejection. (Vide Ex.C-2). The petitioner alleges that the rejection of the nomination paper was improper and that the result of the election has been materially affected by such improper rejection and that the election is wholly void. The main contentions he put forth in his petition are that the Returning Officer did not find that the signature was not the genuine signature of the proposer, that there was not even an attempt made by him to verify and that he had shut out the petitioner from producing the proposer and necessary proof of his signature by refusing even an hour's time before closing the scrutiny. (Vide para. 5 of his petition). The other allegations in the petition are either explanatory or have no reference to the main ground of rejection.

2. The first respondent who has been successful in the election alleged that the signature of the proposer as entered in the petitioner's nomination paper was not genuine, that the petitioner never made any request written or oral for granting him time to prove the genuineness of the proposer's signature or to produce the proposer himself, that the Returning Officer rightly rejected the nomination paper of the petitioner and that the result of the election has not been materially affected by the rejection of the nomination paper. Alternatively, it was pleaded that the signature of the proposer may have been obtained by fraud; but, that was merely the belief of the 1st respondent.

3. The other respondents filed no counters.

4. On the contentions put forth, the following points for determination were framed—

- I. Whether the rejection of petitioner's nomination paper was improper?
- II. If so, whether the result of the election has been materially affected?
- III. Whether the petition is not maintainable for the reasons stated in para. 10 of the counter?

5. At the hearing, the parties have filed a joint memo that the third point may be deleted. The Returning Officer has been examined as C.W.I. The petitioner examined the proposer as P.W.1 and himself as P.W.2. The first respondent has examined himself as R.W.1.

6. *Point No. I.*—The Returning Officer Sri K. Srinivasan I.A.S. has stated what took place at the scrutiny on 28th November 1951, in his court-hall at Vizianagaram. As it is the propriety or otherwise of his rejection of the petitioner's nomination paper that is in question, we think it necessary to set out at some length his evidence of what took place then.

7. On going through the nomination paper, he said that he noticed that there was a difference between the name of the proposer and the signature of the proposer. Then, he asked the petitioner whether the two persons were the same or different. The petitioner is said to have answered that they were one and the same person. Then, he (Returning Officer) showed the nomination paper to the other candidates (respondents 1 to 4). All of them are said to have stated that

the proposer did not sign. He agreed with the respondents' contention and announced his decision that he could not accept the nomination. The proposer was not present there. He thought it was unnecessary to adjourn the proceedings for the purpose of verification. According to him, he felt he was bound only to make a summary enquiry as he considered necessary, and by giving time he would be throwing open the door for tutored evidence. He made it clear that he did not consider that the signature of the proposer in the nomination form was that of the proposer, and that was the ground of his rejection. He further stated that after he announced his decision the petitioner offered to adduce evidence. The order drawn up by him contemporaneously is Ex.C-2.

8. Ex.C-1 is the nomination paper. The two relevant heads are Nos. 9 and 12: Name of the proposer; and signature of the proposer respectively. Mr. Jutthada Venkata Ramanayya is the name as entered against head No. 9. The signature of the proposer as entered against head No. 12 is Jutthada Venkataramiah. (The letters are clear and there is absolutely no difficulty in deciphering the name from the signature) Vide Ex.C1-a. Plainly, therefore, there is a discrepancy patent on the face of the nomination paper. We are also satisfied that that was a material discrepancy of a substantial character and not merely a technical defect. The Returning Officer had rightly taken the objection that the proposer had not signed the nomination paper. We have no reason to doubt that what he stated in evidence was what happened at the scrutiny. As such, it is seen that he questioned the respondents who were present there and they concurred in the view that he had taken.

9. Evidence has been adduced before us by the petitioner to show that in fact the proposer himself had signed the nomination paper against head No. 12.

10. P.W.1 is the proposer and he claimed that the signature (Ex.C1-a) is his. He also said that he usually signs as J. V. Ramaniah. Exs. P1 to P7 and R-3 to R-11 are put in evidence as prior signatures. In all of them he signed as J. V. Ramaniah. Then, he asserted that when he has to sign his name in full he would sign as Jutthada Venkataramiah, as noted in Ex.C1-a. He is definite that the letters in Ex.C1-a after 'Venkata' are 'Ramiah', that some times the letter 'n' is visible after the letter 'm' and some times it is not visible. Under the directions of the Tribunal, he was asked to sign his full name and he signed it as in Ex.R-1. Apart from the fact that the value to be attached to purposeful signatures is next to nothing, P.W.1 himself has made statements which discredit the genuineness of Ex.R-1 as his usual signature. His unequivocal statement is that he did not remember if he signed any document in the way in which he did in Ex.R-1. He says that the letters 'n' and 'a' are omitted in Ex.R-1, but still, he asserted that that was the usual way in which he signed his full name. The shapes of the letters in his usual signatures produced before us and of the signature now claimed by him as his in the nomination form are absolutely different. They are patent from a scrutiny thereof.

11. Certain facts are brought out in evidence which may be referred to in this context. The petitioner in his evidence said that he asked P.W.1 (the proposer) to sign his full name, and what actually appears is not his full name but a different name. The proposer himself has admitted that the petitioner asked him to accompany him on the day of scrutiny to Vizianagaram but that he did not go. The proposer has also owned that he worked as agent for the 1st respondent at the election wherein he came out successful. These surrounding circumstances would suggest that the proposer deliberately stayed away on the day of scrutiny. This is suggestive that he deliberately made himself scarce on the day of scrutiny as he was not prepared to face an enquiry.

12. We are satisfied that Ex.C1-a is not the proposer's genuine signature and that the proposer has not signed the nomination form wherein his name has been entered as proposer, and that his present evidence is only to accommodate the petitioner.

13. The petitioner himself deposed as P.W.2. He said that the Returning Officer objected that the signature of the proposer was not genuine, and asked the respondents if the signature of the proposer was genuine, and they said that it was not his, that he announced his decision rejecting the nomination paper, and then the petitioner requested him for time before he (Returning Officer) wrote out the order. This evidence is quite in conformity with what the Returning Officer has stated.

14. The first respondent as R.W.1 deposed that the signature of the proposer as entered in Ex.C-1 is not a genuine one and that the proposer did not sign. We are aware that he is an interested party; but, inasmuch as we accept the Returning Officer's statements as true, we consider R.W.1's evidence as corroborative. The Returning Officer can be said to have made a summary enquiry so far as it was possible in the circumstances. We are not able to say that his misapprehensions as to what might happen by giving further time to the petitioner were altogether baseless. He also said that after he announced his decision the petitioner offered to adduce evidence, suggesting that the petitioner had nothing to say till a decision was given by the Returning Officer. Accepting, as we do, the Returning Officer's statements of what took place on the day of scrutiny of the petitioner's nomination paper, we see that the grounds stated in support of the petition (set out by us supra) are not correct. The Returning Officer did find in so many words that the proposer had not signed and that the signature appearing on the nomination form was not his signature. He did verify with the persons then present (respondents). He then announced his decision, and then the petitioner is said to have come forward with a request for time and adjournment of the scrutiny. The Returning Officer was well within his powers to refuse an adjournment. However, in view of our finding confirming the Returning Officer's decision, the refusal to grant an adjournment ceases to be material.

15. It is absolutely essential that a nomination paper shall be completed in the prescribed form and subscribed by the candidate himself and by the proposer and the seconder—See Section 33 Cl.(1) of the R. P. Act. Where it is reasonably clear on a scrutiny of the nomination paper that the proposer did not subscribe his signature thereto, the Returning Officer was certainly entitled to refuse the nomination paper under Section 36(2) (d) of the R. P. Act. It follows that the signature of the proposer as entered against head No. 12 in the nomination paper is not genuine, which is also a ground of rejection under Section 36(2) (c) of the R. P. Act.

16. On the evidence, and a complete appraisement of the circumstances, we find that the nomination paper was not subscribed by the proposer and was properly rejected.

17. *Point II.*—In view of our finding on point No. I, this point does not arise for determination.

18. The result is, the petitioner is not entitled to the reliefs prayed for, and his petition is dismissed with the costs of the 1st respondent. Pleader's fee Rs. 100/-.

Dictated to the Shorthand Writer and pronounced in open court this 24th day of November 1952.

(Sd.) K. V. L. NARASIMHAM, *Chairman.*
 (Sd.) T. SRIRANGAM, *Member.*
 (Sd.) P. CHENCHIAH, *Member.*

Witnesses examined for the Petitioner.

1. Juttada Venkata Ramanayya (Proposer).
2. Pulapa Narasingarao (Petitioner).

For the Respondents.

1. Sri K. Suryanarayana (1st respondent).

For the Court:

Sri K. Srinivasan, I.A.S

DOCUMENTS MARKED FOR THE PETITIONER

Exhibits

P-1/5-12-50—Affidavit by J. V. Ramanayya, Secretary, presented to the Income-tax Officer, Vizianagaram.

P-2/5-12-50—Form of certificate of Income-tax assessment for import and export licence applied by J. V. Ramayya for Bimilipatam Motor Workers Union.

P-3/5-7-51—Letter from J. V. Ramayya, Secretary, Bhimilipatnam Motor Workers Union, addressed to the District Superintendent of Police, Vizag South Visakhapatnam.

P-4/3-3-52—Letter from J. V. Ramayya, Secretary, Bhimilipatnam Motor Workers Union, addressed to the District Superintendent of Police, Vizag South Visakhapatnam.

P-5/28-7-51 Letter from J. V. Ramayya, Secretary, Bhimilipatnam Motor Workers Union, addressed to the Sub-Inspector of Police, Bhimilipatnam.

P-6/30-7-51—Letter from J. V. Ramayya, Secretary, Bhimilipatnam Motor Workers Union, addressed to the Sub-Inspector of Police, Bhimilipatnam.

P-7/1-4-51—Letter from J. V. Ramayya, Secretary, Bhimilipatnam Motor Workers Union, addressed to the Regional Transport Officer.

P-8/—Printed Electoral Roll for the Bheemunipatnam constituency.

P-8(a)/—Entry No. 281 relating to Juttada Venkata Ramanayya in the Electoral roll.

For the Respondents—

R-1/—Signature of “Juttada Venkataramanayya” in full obtained in court on a blank paper.

R-2/—Signature of “Juttada Venkataramanayya” in full obtained in court on a blank paper signed as “J. V. Ramiah”.

R-3/18-12-51—Letter from J. V. Ramayya, Secretary, Bheemunipatnam Motor Workers Union to the Regional Transport Officer, Visakhapatnam.

R-4/1-11-51—Letter from J. V. Ramayya, Secretary, Bheemunipatnam Motor Workers Union to the Regional Transport Officer, Visakhapatnam.

R-5/12-11-51—Letter from J. V. Ramayya, Secretary, Bheemunipatnam Motor Workers Union to the Regional Transport Officer, Visakhapatnam.

R-6/2-11-51—Letter from J. V. Ramayya Secretary, Bheemunipatnam Motor Workers Union to the Regional Transport Officer, Vlsakhapatnam.

R-7/15-8-51—Letter from J. V. Ramayya, Secretary, Bheemunipatnam Motor Workers Union, to the Regional Transport Officer, Visakhapatnam.

R-8/10-7-52—Letter from J. V. Ramayya, Secretary, Bheemunipatnam Motor Workers Union, to the Municipal Commissioner, Bhimilipatnam.

R-9/14-7-52—Statement submitted by J. V. Ramayya, Secretary, Bheemunipatnam Motor Workers Union, to the Municipal Commissioner, Bhimilipatnam, showing the names of employees established and the salaries drawn in their favour.

R-10/5-3-51.—Letter from J. V. Ramiah, Secretary, Bheemunipatnam Motor Works Union to the Sub-Inspector of Police, Bheemunipatnam.

R-11/1-7-51—Letter from J. V. Ramiah, Secretary, Bheemunipatnam Motor Works Union to the Sub-Inspector of Police, Bheemunipatnam.

For the Court—

C-1/21-11-51—Nomination paper filed by Pulapa Narasingarao Naidu, petitioner.

C-1(a)/—Signature of Juttada Venkataramanayya in Ex. C-1.

C-2/28-11-51—Order declaring the nomination invalid.

(Sd.) K. V. L. NARASIMHAM, Chairman.

(Sd.) T. SRIRANGAM, Member.

(Sd.) P. CHENCHIAH, Member.

No. 19/178/52-Elec.III.—WHEREAS the elections of Shri Satyendra Chandra Ghosh Moulik of Village Panchthupi, P. S. Burwan, District Murshidabad, and of Shri Sudhir Mandal of Village Purapara, P. S. Khargram, District Murshidabad as members of the Legislative Assembly of West Bengal, from the Burwan-Khargram constituency of that Assembly have been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Nrisinha Kumar Sinha of Khagra, P. S. Berhampore, District Murshidabad;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the said Election Petition;

Now, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, WEST BENGAL.

ELECTION PETITION NO. 178 OF 1952.

Election Case No. 7 of 1952

The 29th November, 1952

Coram

Sri S. C. Ray Chaudhuri, M.A., LL.B.—Chairman.

Members

Sri M. N. Gan, M.A., LL.B.,

Sri Sudhir Kumar Bhose, M.Sc., LL.B.

In the matter of an application under Sections 81 and 84 of the Representation of the People Act, 1951.

And

In the matter of Nrisinha Kumar Sinha, son of Madhu Sudan Sinha, residing at Khagra, P. S. Berhampore, District Murshidabad. Petitioner.

Versus

(1) Satyendra Chandra Ghosh Moulik, village Panchthupi, P.S. Burwan, District Murshidabad.

(2) Sudhir Mandal, village Purapara, P.S. Khargram, District Murshidabad.

(3) Abdul Jabbar Mia, village Uttar Gopinathpur, P.S. Devi-Parulia, District Murshidabad.

(4) Kirtish Chandra Bandopadhyay, village Eroali, P.S. Khargram, District Murshidabad.

(5) Subodh Krishna Ghose Moulik, village Panchthupi, P.S. Burwan, District Murshidabad.

(6) Bhupendra Pramanik, village Parulia, P.S. Khargram, District Murshidabad.

(7) Ganga Narain Roy, village Raigram, P.S. Bharatpur, District Murshidabad.

(8) Abhoypada Saha, village Bharatpur, P. S. Bharatpur, District Murshidabad.

(9) Rabindra Kumar Adhikary, village, Panchthupi, P.S. Burwan, District Murshidabad.

(10) Nibaran Bayen, village Jajan, P.S. Bharatpur, District Murshidabad.—

Respondents.

For Petitioner—Shri Nirmal Chandra Sen—Advocate.

For Respondent No. 1—Sri Purnendu Sekhar Basu—Advocate,
instructed by Sri Pratap Chanda Chunder—Solicitor.

For Respondent No. 2—Sri Nut Behari Dutt—Pleader.

For Respondent No. 5—Sri P. B. Roy Chaudhury—Pleader.

JUDGMENT

The petitioner Nrisinha Kumar Sinha, a candidate for election as a member of the West Bengal Legislative Assembly from the Burwan-Khargram Constituency in the district of Murshidabad, has called into question the election of the returned candidates, Satyendra Chandra Ghosh Moulik, Respondent No. 1 and Sudhir Mondal, Respondent No. 2 on the ground of improper rejection of his nomination papers and also those of Respondent No. 10, Nibaran Bayen. Burwan-Khargram is a two-seated constituency of which one seat is reserved for the Scheduled Caste. The petitioner was a candidate for general seat and Nibaran Bayen was a candidate for the Schedule Caste seat. The Respondent No. 1, Satyendra Chandra Ghosh Moulik was elected to the general seat and the Respondent No. 2, Sudhir Mondal to the Scheduled Caste seat.

There were altogether 11 candidates. Except the nomination papers of the petitioner Nrisinha Kumar Sinha and the Respondent No. 10, Nibaran Bayen, the nomination papers of all other candidates were accepted but the Respondent No. 9, Rabindra Kumar Adhikari withdrew his candidature. On 19th November 1951 the petitioner Nrisinha Kumar Sinha presented 3 nomination papers which were numbered 24, 25 and 26 and the Respondent No. 10, Nibaran Bayen presented 4

nomination papers which were numbered 29, 30, 31 and 32. In the headings of all those nomination papers of the petitioner and Nibaran Bayen, the Legislative Assembly was described as "West Bengal State Legislative Assembly". On 21st November 1951, Sri A. R. Biswas, the Returning Officer held scrutiny and rejected all those nomination papers on the ground that the Legislative Assembly was not properly described. The petitioner alleged that he became a *persona non-grata* with the Congress Party as well as with the local executive officers of the Government for resigning his membership of the Congress and accordingly he was denied justice. He made certain statements in the election petition alleging that the Returning Officer at first accepted one of his nomination papers but subsequently revised his previous order at the instance of the returned Congress candidate, Respondent No. 1, Satyendra Chandra Ghosh Moulik, and rejected illegally that nomination paper. His contention is that the description "West Bengal State Legislative Assembly" in the headings of the nomination papers is not at all an error or at most it is a technical defect not at all of a substantial character and as such the Returning Officer failed to deal with the nomination papers during scrutiny according to law and acted illegally and improperly in rejecting them, and thereby the result of the election has been materially affected.

The returned Congress candidates, Respondent No. 1, Satyendra Chandra Ghosh Moulik and the Respondent No. 2, Sudhir Mondal contest the case supporting the order of the rejection of the nomination papers and traversing the material allegations made in the election petition. Their principal defence is, that the result of the election has not been materially affected by the rejection of the nomination papers of the petitioner, Nrisinha Kumar Sinha and Respondent No. 10, Nibaran Bayen.

The Respondent Nos. 5, 7 and 10 sent by post separate written statements out of time supporting in substance the petitioner's case, but those written statements could not be accepted for not taking proper steps in time. The Respondent No. 5, Subodh Krishna Ghosh Moulik appeared during trial and examined himself in support of the petitioner's case. Other Respondents have not entered appearance.

As various allegations have been made in the election petition against the Returning Officer, Sri A. R. Biswas, a copy of the election petition was served on him and he appeared at the time of hearing. There being an objection that the Returning Officer is a necessary party, an issue was framed on that point at the preliminary stage. During trial that issue was first taken up before entering into the merits and it was expunged after hearing the learned lawyers of both parties as the final decision of the case does not depend on that issue. Neither party proposed to examine the said Returning Officer as his witness, but they wanted to have him as a Court witness. The Tribunal did not deem it necessary to examine him as a Court witness in the circumstances of the case and discharged him.

The following issues remain for decision by the Tribunal—

(1) (Expunged)

(2) Were the nomination papers of the petitioner and the Respondent No. 10, Nibaran Bayen improperly rejected?

(3) Was the result of the election materially affected by the alleged improper rejection of the nomination papers of the petitioner and Nibaran Bayen?

(4) Can the election be declared wholly void?

(5) What relief, if any, is the petitioner entitled to?

Decision

(2) The first question now is whether the nomination papers of the petitioner and Nibaran Bayen were improperly rejected by the Returning Officer. As already stated the petitioner presented 3 nomination papers Exbts. 1 to 1(b) and Nibaran Bayen 4 nomination papers Exbts. 2 to 2(c), in all of which the heading in respect of Legislative Assembly was filled up with the expression "West Bengal State". The Returning Officer received them apparently being satisfied as to the entries made therein as required under Sec. 33(5) of the Representation of the People Act, 1951. During scrutiny under Sec. 36 of the Act, all the said nomination papers were rejected *suo motu*, endorsing under the 'certificate of scrutiny' either as "Rejected as the name of the Legislative Assembly is not properly described" or as "Rejected as the Legislative Assembly is not properly described". The

duties of the Returning Officer relating to the presentation of nomination papers and scrutiny of nominations have been clearly stated in Section 33(5) and Section 36 of the Representation of the People Act, 1951. Under Section 33(5) "on the presentation of a nomination paper the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are same as those entered in the electoral rolls:—

Provided that the Returning Officer may—

- (a) permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls; and
- (b) where necessary direct that any clerical or printing error in the said entries shall be overlooked".

In the prescribed printed form of the nomination paper there are certain instructions in the notes printed thereon as to how the different items of the nomination paper are to be filled in. Those instructions do not contain any direction as to how in the heading of the nomination paper the Legislative Council or the Legislative Assembly or the Electoral College should be described. Note (1) printed on the nomination paper enjoins that the nomination paper should be delivered at the place specified in the notice issued by the Returning Officer under section 31 or section 39(3), as the case may be, of the Representation of the People Act, 1951, between the hours of 11 o'clock in the forenoon and 3 o'clock in the afternoon any day before the.....195.—The learned advocate for the petitioner argues that it is the duty of the Returning Officer who supplies the nomination papers, to fill up the gap in Note (1) as well as the heading, and if there be any inaccuracy, in the opinion of the Returning Officer, in filling up the heading, the Returning Officer should either get it corrected or overlooked it, but he on no account should reject a nomination paper for any defect in the heading. We cannot appreciate the force of such contention nor can accept it as sound. The gap in Note(1) in respect of the date is notified and it cannot be a part of the duty of the Returning Officer to fill up the heading. Section 33(5) gives discretion to the Returning Officer to permit any clerical error in regard to the names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls, and where necessary to direct that any such error shall be overlooked. In the nomination papers of the petitioner and Nibaran Bayen no error of any kind was noticed in respect of which the Returning Officer could exercise his discretion. In the heading of the nomination papers in question the Legislative Assembly was described as "West Bengal State Legislative Assembly". The Returning Officer thought apparently during scrutiny that the mention of the word "State" is an irregularity and it was of such a nature that the nomination papers could not stand the test of scrutiny and they merited rejection. Section 36(2) gives the Returning Officer an authority to exercise a judicial function and to adjudicate on a very important right of an elector to offer himself as a candidate for election as a member of the Legislative Assembly. He is to decide all objections to any nomination after such summary enquiry as may be necessary and he is given authority to refuse any nomination on certain specific grounds. None of the grounds stated in the said sub-section (2) can cover the present case with any stretch of imagination. The attempt to cover this case under the ground stated in Clause (d) of sub-section (2), viz., "that there has been any failure to comply with any of the provisions of section 33" not only does not stand to reason but becomes wholly improper even from the common sense point of view. The description in the heading of the nomination papers is not at all misleading or vague nor is it contrary to any direction given anywhere by the Legislature or the Election Commission. Nowhere it has been laid down how the Legislative Assembly of the State of West Bengal should be described in the heading of the nomination paper. The expression "the Legislative Assembly of the State" has been used in numerous articles of the Indian Constitution and also in the Preamble of "The Delimitation of Parliamentary and Assembly Constituencies (West Bengal) Order, 1951." Section 36(4) gives a mandatory direction that "the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character". The intention of the Legislature is abundantly clear from the sub-section that no eligible candidate should be refused nomination for such an imaginary defect, in filling up his nomination paper.

The way in which this Returning Officer dealt with the nomination papers deserves some comment. It is apparent on the face of the record that he signally failed to apply his judicial mind to them and thereby deprived the entire body of electors of their valuable right on the flimsiest ground. Section 36(6) of the Representation of the People Act, 1951 gives the mandatory direction that "the Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection." In none of the nomination papers before us, the Returning Officer endorsed the order of acceptance. In the nomination papers accepted by him he simply put his initial over the printed words "Returning Officer." Under the certificate of scrutiny the printed portion gives the data for acceptance of a nomination paper. Certainly the endorsement of acceptance should be clearly written though no further statement of reasons is necessary as in the case of rejection in nomination paper No. 24 (Ext. 1) of the petitioner, the Returning Officer first put his initial with date above the printed portion "Returning Officer" but subsequently scored it out. The petitioner's contention is that his nomination paper was first accepted, but at a later stage the order was revised and the nomination paper was rejected by recording, across the space provided for writing endorsement, the following order, "Rejected as the Legislative Assembly is not properly described." The learned advocate for the petitioner contends that the Returning Officer had no jurisdiction to revise his order which he previously passed. A similar question was raised in a Municipal Election Case reported in 58 C.W.N. 819 (at p. 826). Accepting the view expressed in that case, we are of opinion that even if it be a fact that the Returning Officer revised his decision in the same sitting at a subsequent stage, he was quite within his jurisdiction to do that. In his election petition the petitioner made it a ground that "the Returning Officer acted illegally and contrary to the law and improperly in tampering with the nomination papers of candidates." He stated in paragraph 11 of his petition that after the rejection of his nomination papers he rushed to the Hon'ble High Court for redress and in the course of the High Court proceedings he obtained an inspection of the nomination papers and discovered that "some of the nomination papers had been tampered with by means of over-writing or interlineations or smudges of ink or by penning through material words in them since and after their said scrutiny." The question of tampering has not been pursued, the prayer being verbally withdrawn by the learned advocate, and no such question can be investigated in the absence of the person so charged, nor it is necessary to do so for the purpose of this case, there being no such tampering in the petitioner's nomination paper. It appears that in certain nomination papers produced before this Tribunal the word "State" written in the heading in the same manner, has been expunged without putting down any initial. Respondent No. 5, Subodh Krishna Ghosh Moulik who has deposed in this case presented 3 nomination papers Nos. 1, 2 and 3 [Exts. 3, 3(a) and 3(b)] of which paper No. 1 was accepted and the other two were rejected. He described the Assembly as "West Bengal State Legislative Assembly" in all his three papers, but in the accepted paper No. 1 (Ext. 3) the word "State" appears to have been scored out. He says on oath that he did not expunge that word. It might have been done by somebody to bring it into conformity with the peculiar view of the Returning Officer that the mention of the word "State" would invalidate the nomination. It may be noticed that the heading in Chapter II of Part III of the Representation of the People Act, 1951 is also described as "the State Legislative Assemblies." The rejection of the nomination papers on the frivolous ground never contemplated by the Legislature, clearly amounted to transgression of law and abuse of power. It is not a case of error of judgment, but one of exercise of an authority without jurisdiction. The Returning Officer was not alive to the heavy responsibilities of his duties and could not possibly realise the consequences of the Improper rejection by which not only the candidate is illegally deprived of his valuable right, but the electors are prevented from selecting the representative of their choice, the State suffers great financial loss and inconvenience and the other candidates are put in unnecessary hardship, harassment and expenses in case the election be declared void and fresh election takes place.

We may in this connection aptly quote with approval the observations made in Parker's Election Agent and Returning Officer, 5th Edition, p. 141 which are as follows "With respect to matters clearly within the jurisdiction of the Returning Officer, it should be remembered that the making and allowance of frivolous objections may lead to the expense of an election petition, and to all the turmoil and expenses of another election".

The Tribunal holds that the rejection of the nomination papers of both the petitioner and Nibaran Bayon was grossly improper and without justification and was contrary to the provisions of the law.

(3) The next question is, whether the result of the election has been materially affected by the improper rejection of the nomination papers in question. "It is well-settled that if the nomination of a candidate is improperly rejected the result of the election is presumed to have been materially affected thereby within the meaning of section 100(1)(c) of the Representation of the People Act, 1951 in as much as the entire electorate is deprived of its right to vote for a candidate who was qualified to stand. This presumption would require the most conclusive evidence for rebuttal and in the absence of such evidence the election of the returned candidate must be declared void"—*Vide Nanak Chand's Election Petition* pp. 138-139. This principle of law has been uniformly accepted in all the reported cases so far as the question of improper rejection is concerned and it has been observed by the Commissioners in the Rohtak Case (1 Jagat Narain, 57 at p. 60) that the above proposition is not open to doubt. References in this connection may be made to the numerous reported election cases of which among others the following may be cited, *viz.*, Ferozepore East (Sikh) Case (1946 Doabia I.E.C. 259; Sen & Poddar, 883), Amritsar Central (Sikh) Case (1937 Doabia I.E.C. 332; Sen & Poddar 15), Satera South Case (1948 Doabia I.E.C. 137; Sen & Poddar 741), Amritsar South (Sikh) Case (1937 Doabia I.E.C. 92; Sen & Poddar 58), Rawalpindi Division Case (1946 Doabia I.E.C. 35; Sen & Poddar 712), South East Punjab (Sikh) Case (1947 Doabia I.E.C. 77; Sen & Poddar 10) and Railway Union's Case (1946 Doabia I.E.C. 211; Sen & Poddar 696).

It has been argued on behalf of the Respondent No. 1 by the learned advocate Sri Purnendu Sekhar Basu that there was not a proper approach to the question in the reported cases and it should not be presumed that the result of the election has been materially affected even if it be held that the nomination papers have been improperly rejected. His contention is that the petitioner should establish a *prima facie* case that the result of the election would have been different if he had been allowed to contest the election, before any such presumption under section 114 of the Evidence Act can arise. The Tribunal cannot accept this view expressed against the trend of numerous judicial decisions on the point. In English law the procedure of nomination and the form of nomination paper are different. It has been laid down in English decisions that "the mandatory provisions of a statute must, however, be obeyed or fulfilled exactly or the election will be declared void" and that "where a Returning Officer had improperly, and without justification refused to put a candidate in nomination, and declared his opponent duly elected, the election was void"—*Vide Parker's Election Agent and Returning Officer*, 5th Edition pp. 277-278.

In Indian law the object of the Legislature is not to shut out any candidate but to allow every qualified eligible elector to appeal to the electorate to consider his candidature. The Returning Officers have been given sufficient discretionary powers under the provisos to section 33(5) and also a mandatory direction in section 36(5) of the Representation of the People Act, 1951 to ensure that the nomination papers be not rejected on unsubstantial and flimsy grounds for not filling them up with meticulous accuracy. The failure to obey the directions of the statute amounts to transgression of the law. In Islington Case (5 O'M & H 120 at p. 125) it has been laid down that if the Court sees that the effect of transgression of law was such that the election was not really conducted under the existing election laws, or it is open to reasonable doubt whether the transgression may not have affected the result of an election, and it is uncertain whether the candidate has really been elected in accordance with the laws in force relating to election, the Court is then bound to declare the election void and it rests on the respondent to prove that such an infraction of law did not and could not affect the result. In this case before us the eligible candidates being refused to contest the election illegally and without justification the election should be deemed as not conducted according to the law in force. In the Durham Case reported in 2 O'M & H 152 (at p. 157) in connection with a case of corrupt practices, Mr. Baron Bramwell made an observation regarding the duty of the Judge to the effect that it is no part of the duty of a Judge to enter into a kind of scrutiny to see whether possibly, or even probably, or as a matter of conclusion upon the evidence, that the result of the election would have been different. Similar view was expressed by Mr. Justice Andrews in a case of undue spiritual influence (*Vide* North Division of Meath Case reported in 4 O'M & H 185 at p. 188) regarding the duty of the Court, *viz.*, that the Court cannot be called on, before avoiding election, to determine, as a matter of fact, that the result of the election would have been different. The same principle would, in our opinion, be applicable in the case of improper rejection of nomination papers as has been done in the present case ignoring the salutary provisions of law and not obeying the mandatory directions of the statute.

The Respondent No. 1 has adduced evidence to rebut the presumption that the result of the election has been materially affected. He has no doubt been placed in a very unfortunate situation on account of illegal and indiscreet action of the

Returning Officer. He is a man commanding good deal of influence as the Return of Election (Ext.B.) will show. It has been argued on his behalf by Shri Purnandu Sekhar Basu, advocate, that the election was fought on party lines and the constituency being congress-minded, the result of the election would not have been affected at all, for less materially, if the petitioner and Nibaran Bayen had been allowed to contest. Comment has been made regarding the conduct of the petitioner, Nrisinha Kumar Sinha who had political activities for many years under the Congress banner. He resigned from the Congress party and filed his nomination papers admittedly as a K.M.P.P. candidate. That fact was suppressed and he posed to be an independent candidate. In cross-examination the petitioner gives halting answers relating to his changeover from one party to another. Respondent No. 7 Ganga Narayan Roy contested the election with K.M.P.P. ticket and secured 12,118 votes while a defeated independent candidate, Respondent No. 4, Kirtish Chandra Bandopadhyaya got 16,333 votes securing second position among the contestants for the general seat. It may be possible that after a study of the "Return of Election" the petitioner had a vacillating mind as to what position he should take and so he described himself as an independent candidate. However, it has been obtained in his cross-examination that he led a public life and had political activities for a long time. He is a senior pleader of Berhampore, District Murshidabad. These facts lend support to his contention that he is a man of some influence. Of course the Respondent No. 10, Nibaran Bayen is practically a non-entity, as the evidence discloses. The onus lies heavily on the respondents to establish conclusively that the result of the election would not have been materially affected if the petitioner and Nibaran Bayen were allowed to contest. The question is not whether the petitioner or Nibaran Bayen could succeed in the election. More creation of a reasonable doubt that the result of the election might not have been affected will not be sufficient to discharge the onus as required by law. The observation of Grove J. in the Hackney Case reported in 2 O'M & H 77 (p. 81) may be quoted to explain the difficult position to come to a correct finding in such cases. He observed "I cannot see how the tribunal can by any possibility say what would or might have taken place under different circumstances. It seems to me to be a problem which the human mind has not been able to solve, viz., if things had been different at a certain period, what would have been the result of the concatenation of events upon that supposed change of circumstances." If any reasonable doubt arises that some other candidate might have a chance of success in case of acceptance of the nomination papers of the petitioner and Nibaran Bayen when they might contest the election, the presumption raised under the law would stand unchallenged. The learned defence advocate attempts to show from the "Return of Election" (Ext. B) that the majority of votes of the returned candidates (Respondents 1 & 2) could not be altered and as such the result of the election would not have been materially affected. Let us examine the position with reference to the said "Return of Election". There were four classes of candidates, viz., Congress, K.M.P.P., Hindu Mahasabha and Independent. The votes cast may be classified as follows:—

Congress

1. Satyendra Chandra Ghosh Moulick	...	...	21,117
2. Sudhir Mondal (Scheduled Caste)	...	...	16,028
	TOTAL	...	37,145

K.M.P.P.

1. Ganga Narayan Roy	...	...	12,118
2. Abhayapada Saha (Scheduled Caste)	7,273
	TOTAL	...	19,391

Hindu Mahasabha

1. Abdul Jabbar Mia	4,989
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Independent

1. Kirtish Chandra Bandopadhyaya	16,333
2. Subodh Krishna Ghosh Moulick	9,053
3. Bhupendra Paramanik	...	...	2,279
	TOTAL	...	27,665

The total number of valid votes polled was 89,190. The two Congress candidates secured 37,145 votes in all and there remained 52,045 votes which were cast in favour of non-Congress candidates. It may be specially noted that the independent

candidate, Kirtish Chandra Bandopadhyaya secured the second position obtaining as many as 16,333 votes, even more than what was secured by the successful Scheduled Caste candidate, Respondent No. 2 Sudhir Mondal. It is idle to speculate what would have been the position if two more candidates joined in the contest of whom one, *viz.*, the petitioner is a man of some importance in the locality. We cannot accept the contention of the learned defence advocate that the majority of votes of the returned candidates could not be affected in any circumstances.

Sri N. C. Sen, advocate for the petitioner, has argued with good reasons that the presumption is absolutely irrebuttable when there is no contested election on account of rejection of nomination papers of other candidates and it is practically irrebuttable in the case of contest among multiple candidates. A good deal of stress was laid by Sri Purnendu Sekhar Basu on account of the contest in the election on party line, which is officially recognised for the first time in India. The entire electorate is however not divided into parties, as we see the independent candidates secured a total of 27,665 votes which is much more than the total number of votes cast in favour of the returned candidate, Satyendra Chandra Ghosh Moulick. The circumstances of the case do not justify an inference that on account of the fight on party lines the position could not be different if the petitioner and Nibaran Bayen had been allowed to join the contest.

The learned advocate Sri Purnendu Sekhar Basu has attempted to distinguish many of the reported cases already cited by us on the ground that in most of them no evidence of rebuttal was adduced and in certain cases there were no contested elections. In this connection he has invited attention of the Tribunal to the following cases, *viz.*—

(1) Anazal M. R. Case [Sen & Poddar 1(5)] in which there were only two contestants and no evidence of rebuttal was adduced.

(2) Amritsar Central (Sikh) Case (Sen & Poddar 15 at p. 17) where contested election took place but the evidence of rebuttal was held to be not conclusive.

(3) Anglo-Indian Case [Sen & Poddar 66(74)] in which case there was no contested election and no evidence of rebuttal was led.

(4) Basti District N.E. Case [Sen & Poddar 106(110)] where there were two contestants and there was no discussion of any evidence of rebuttal.

(5) Batala (Sikh) Case [Sen & Poddar 122(127)] in which there were five contestants, but no evidence of rebuttal was adduced.

(6) Dera Gazi Khan North Case [Sen & Poddar 284(288)] in which no contested election took place and no evidence of rebuttal was adduced.

(7) Lucknow City M.U.W. Case [Sen & Poddar 487(490)] in which also no contested election took place and no evidence of rebuttal was adduced.

(8) Muradabad District N. W. Case [Sen & Poddar 564(588)] in which petitioner adduced evidence and the respondent urged taking a contrary view that the petitioner must show with mathematical precision that the result has been materially affected, before the election can be declared void. It was rightly held that such cannot be the intention of the Legislature.

(9) Multan Division Case [Sen & Poddar 597(604)] in which two of the candidates went to the poll but the respondent did not produce a scintilla of evidence to discharge a burden which lay heavily upon him.

(10) North Kendrapara Case [Sen & Poddar 649(652)]. This election was fought on party lines though such election on party lines was not officially recognised at that time. Duplicate Congress candidate was set up and the petitioner only led very strong evidence to establish his chances. This case is quite distinguishable.

(11) Rawalpindi Division Case [Sen & Poddar 712(715)] in which no contested election took place nor any evidence of rebuttal was adduced.

(12) Razzar Muhammadan Rural Case [Sen & Poddar 716(727)] in which there was contest between two candidates and no evidence of rebuttal was adduced by the respondent.

(13) Sitapur District Case [Sen & Poddar 759(763)]. In this case also no contested election took place and no evidence of rebuttal was adduced, and

(14) Malda North Case [Sen & Poddar 542(546)] in which also no evidence was led to rebut the presumption.

In the present case the attempt made to rebut the presumption by evidence has already been discussed by us. We are not convinced that the presumption has been rebutted to such an extent that an irresistible inference can be drawn that the result of the election would not have been materially affected on account of the rejection of nomination papers of the petitioner and Nibaran Bayen.

The Tribunal accordingly holds that the result of the election has been materially affected by the illegal and improper rejection of the nomination papers of the petitioner and Nibárah Bayen (Respondent No. 10) without any justification.

(4) In view of our decision that the result of the election has been materially affected by the improper rejection of the nomination papers of the petitioner and Nibaran Bayen, the election must be declared wholly void under section 100(1)(C) of the Representation of the People Act 1951.

(5) Lastly there remains for consideration the question of costs. None of the respondents is responsible for the rejection of the nomination papers. The arbitrary and illegal action of the Returning Officer has unfortunately put the returned candidates to unnecessary harassment, trouble and inconvenience. A fresh election will entail heavy expenses which they may have to incur. The respondents cannot therefore be saddled with any cost of the petitioner for this case. We accordingly direct that the parties be left to bear their own costs.

ORDER

That the election of Burwan-Khargram Constituency in the district of Murshidabad held on 17th and 19th of January 1952 and published in the Calcutta Gazette on 14th February, 1952 be declared wholly void and the parties do bear their own costs.

CALCUTTA;

Dated the 29th November, 1952.

S. C. RAI CHAUDHURI,
Chairman, Election Tribunal.

M. N. GAN,
Member, Election Tribunal.

SUDHIR KUMAR BHOSE,
Member, Election Tribunal.

P. S. SUBRAMANIAN,
Officer on Special Duty.